IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.**487 OF 1993**

The State of Maharashtra ***.. Appellant (Orig. Complainant)***

Versus

Bapu Vithal Kale
Occ. : Driver,
R/o. Dahitanewadi,
Tal. Akalkot ***.. Respondent (Orig. accused)***

Mr. S.S. Pednekar APP for the State
Mr. P.D. Pise, Advocate for the Respondent/accused

CORAM : SMT.RANJANA DESAI,J.

DATED : 6th OCTOBER,2006

ORAL JUDGEMENT :-

1. The respondent was the driver of the truck bearing No.MWC-4753. He was tried in the Court of Judicial Magistrate, First Class, Akalkot in Summary Trial Case No. 406 of 1988 for the offences punishable under sections 279, 304-A, 338, 337 and 427 of Indian Penal Code. By the impugned judgement and order dated 22/06/1993, the learned Magistrate acquitted the respondent/accused of the said offences and hence this appeal by the State of Maharashtra.

2. It is necessary to give the gist of facts. On 13/05/1988, complainant Ashok Sidharud Jawalkote alongwith members of his family and guests was going to village Hiroli in a jeep. The jeep was bearing No. MUL-2961. They were going to attend *'Javal'* ceremony of the son of the complainant (shaving head of son of the complainant). Subhash Yenegur was driving the jeep. When he reached village Sangwi, one truck bearing No. MWC-4753 came from opposite direction and dashed against the jeep. According to the prosecution, the truck was driven at high speed. Due to the impact, the inmates of the jeep were fatally injured. Two persons sitting in the jeep i.e. Tarabai Bennesur and Vijay Kakabhari died instant death. The injured were then brought to the municipal dispensary Akalkot from where they were taken to Civil Hospital Solapur. Kalawati another inmate of the jeep also died during treatment. Sweta and Subhash Yenegure sustained grievous injuries. The information of the incident was given to the police at North-Police Station on the basis of which crime was registered for the offences under sections 304-A, 279, 338, 337 and 427 of Indian Penal Code.

3. After completion of investigation, the accused came to be charged as aforesaid. In support of its

case, the prosecution examined five witnesses. PW-1 Ashok Siddharud Jawalkote, PW-2 Shantabai Siddharud Jawalkote and PW-3 Laxmiputra Kallappa Alagi were sitting in the jeep. PW-4 Subhash Vithalrao Yenegure was driving the said jeep. PW-5 Piraji Kallappa Patil is the investigating officer.

4. The accused denied the prosecution case and he claimed to be tried. The accused did not lead any evidence. After perusing the evidence, the learned Magistrate acquitted the accused as aforesaid. Hence this appeal by the State of Maharashtra.

5. I have heard the learned counsel for the parties. With their assistance, I have gone through the evidence and the record of the case.

6. Learned APP contended that the impugned judgement and order is perverse and hence it should be set aside by this Court. He submitted that all the three inmates of the jeep have clearly stated that the truck was being driven at high speed. Learned APP urged that the learned Magistrate has erred in ignoring the cogent evidence of eye witnesses. He pointed out that PW-4 Subhash Yenegure being the driver of the jeep is

the most natural witness and there was no reason for the learned Magistrate to ignore his evidence. Learned APP further urged that the learned Magistrate wrongly ignored the spot panchanama from which it is clear that the truck had covered the entire tar road whereas the tyre marks of the jeep disclosed that it had run from over the metal road adjacent to the tar road thereby clearly indicating that the truck had not allowed any space for the jeep on the tar road. Learned APP contended that three persons have lost their lives in the incident in question. The evidence on record clearly indicates negligence or rash driving of the accused. It is therefore necessary according to the learned APP, for this Court to set aside the impugned judgement and order of acquittal and convict the accused in accordance with law.

7. Learned Counsel for the respondent-accused on the other hand supported the impugned judgement and contended that no interference is necessary with it. He submitted that the prosecution has failed to prove its case beyond reasonable doubt. Learned Counsel urged that view taken by the learned Magistrate is a reasonably possible view which should not be disturbed in the appeal against acquittal.

8. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for both sides. I have carefully perused the evidence of the inmates of the jeep and also the evidence of the driver of the jeep. It is significant to note that though PW-1 Ashok Jawalkote has stated that the truck was at high speed, he has also stated that the truck was keeping to its side. He has further stated that the jeep passed a little distance ahead from the accident spot, but it changed its direction. Apart from stating that the truck was at high speed, Ashok has not given any further details of the accident. In fact, he has added that the truck was keeping to its side. His statement that the jeep passed a little distance ahead from the accident spot, is consistent that the defence case that the jeep was also proceeding at high speed. In my opinion, evidence of PW-1 Ashok Jawalkote does not help the prosecution.

9. PW-2 Shantabai Sidharud Jawalkote has also stated that the truck came from opposite side and that it violently dashed against the jeep. She has stated that thereafter she lost her consciousness. She has stated that she was sitting in the back portion of the

jeep. Her evidence is not useful to ascertain exactly in what manner the incident could have taken place.

10. PW-3 Laxmiputra Kallappa Alagi has also stated that the truck came from the opposite side and dashed against the jeep. He has denied that the truck was at slow speed but he has added that the truck was keeping to its side. He has further stated that the truck stopped where the accident had happened and the jeep ran the distance of 10 or 15 feet from the accident spot, after accident. He has further added that at the time of accident, the jeep was completely on the tar road and the jeep was keeping at the left side of the road. Though he has denied the suggestion that the jeep was driven at high speed, his statement that the truck was keeping to its side and the truck stopped near the accident spot and the jeep ran the distance of 10 to 15 feet from the accident spot is also consistent with the case that it is the jeep which was at high speed. The prosecution case that the truck crossed over the side and dashed against the jeep becomes a little doubtful.

11. PW-4 Subhash Vithalrao Yenegure, driver of the jeep has also stated that the truck came at high speed and the accident happened due to the driver of the

truck. Being driver of the jeep which was involved in the accident, evidence of this witness has to be read with caution because it is quite possible that in order to put the blame on the driver of the truck, he would exaggerate the occurrence to suit him. In my opinion, in the cross-examination such attempt is clearly discernible. Whereas all other witnesses have said that after the incident the jeep ran the distance of 10 to 15 feet, this witness has denied this version. He has further stated in his cross-examination that it is the truck which had ran ahead, which is not the case of any other witnesses. It is pertinent to note that the statement of this witness was recorded after a fortnight. In such circumstances, I find it very difficult to rely on the evidence of this witness.

12. PW-5 ASI Piraji Kallappa Patil is the Investigating Officer. Evidence of this witness is sketchy. Surprisingly, he has not given any particulars about the investigation conducted by him. It is pertinent to note that PW-3 Laxmiputra Alagi has stated that his statement was not recorded by the police. It was necessary for PW-5 Piraji to categorically state that he had recorded the statement of Laxmiputra and if Laxmiputra's statement was not recorded as alleged then

it is unsafe to rely on his evidence. It is true that in the panchanama of scene of offence Exh-20, it is stated that the truck had covered the entire tar road whereas tyre marks of the jeep disclosed that it ran from over the metal road adjacent to the tar road. It was argued by the learned APP Mr. Pednekar that it is therefore the truck which had not allowed any space for the jeep on the tar road. It is difficult for this Court to uphold the order of acquittal on the basis of only a panchanama to which even a reference is not made by the Investigating Officer. The prosecution has not chosen to examine panchas. In such circumstances, the prosecution can not use this panchanama to substantiate its case.

13. In my opinion, the learned Magistrate has rightly come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The view taken by the Learned Magistrate is a reasonably possible view. The impugned judgement and order can not be called perverse. It is well settled that if the view taken by trial court is a reasonably possible view just because some other view is possible, the Court can not substitute that view in place of the view taken by the trial court. In the view that I have taken the instant

Criminal Appeal is liable to be dismissed and is dismissed as such.

(SMT. RANJANA DESAI,J.)